

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**PROTECT CONSUMERS' ACCESS  
TO QUALITY HOME CARE  
COALITION, LLC AND ELISA PELLHAM**

**APPELLANTS,**

**v.  
JASON KANDER, SECRETARY OF  
STATE OF MISSOURI AND NICOLE R.  
GALLOWAY, STATE AUDITOR OF MISSOURI**

**RESPONDENTS.**

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DOCKET NUMBER WD79100

DATE: November 17, 2015

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Appeal From:

Cole County Circuit Court  
The Honorable Jon E. Beetem, Judge

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Appellate Judges:

Special Division: James E. Welsh, Presiding Judge, Gary Dean Witt, Judge and Anthony Rex Gabbert, Judge

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Attorneys:

Lowell D. Pearson and Robert R. Harding, Jefferson City, MO, for appellants.

Jeremiah Morgan and Paul Harper, Jefferson City, MO, for respondents.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

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**PROTECT CONSUMERS' ACCESS  
TO QUALITY HOME CARE COALITION,  
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**JASON KANDER, SECRETARY OF  
STATE OF MISSOURI AND NICOLE R.  
GALLOWAY, STATE AUDITOR OF MISSOURI,**

**RESPONDENTS.**

No. WD79100

Cole County

Before Special Division: James E. Welsh, Presiding Judge, Gary Dean Witt, Judge and Anthony Rex Gabbert, Judge

This appeal raised issues regarding the summary statement, fiscal note summary, and fiscal note of an initiative petition filed with the Missouri Secretary of State. The initiative petition seeks to require providers of certain in-home services and vendors of consumer-directed services, which receive reimbursement from the State of Missouri pursuant to the MO HealthNet Program, to pay a certain required percentage of the revenue derived from these services to the individual performing the services in the form of wages and benefits. Plaintiffs Protect Consumers' Access to Quality Home Health Care Coalition, LLC and Elisa Pellham (collectively "Plaintiffs") appeal the Amended Final Judgment of the trial court certifying the Official Ballot Title, including the summary statement, fiscal note summary, and fiscal note, and denying all of Plaintiffs' claims.

**We affirm in part, reverse in part, and remand for certification of a corrected summary statement.**

Special Division holds:

(1) The trial court erred in certifying the Summary Statement because it is insufficient in two respects. First, the Summary Statement fails to give the voter any information regarding the subject matter of the Initiative. This deficiency can be easily cured by including a reference in the Summary Statement to the MO HealthNet program. Second, the Summary Statement is misleading insofar as it refers to "personal care attendants" as "employees." This can also be cured by including a reference in the Summary Statement to "personal care attendants." The remaining complaints by Plaintiffs regarding deficiencies in the Summary Statement are without merit. Point One is granted in part. The judgement is reversed with regard to the Summary Statement and remanded to the circuit court for certification of summary statement as follows:

**Shall Missouri law be amended to require in-home service providers and vendors to pay an employee or personal care attendant at least 85 percent of the state funds they received under the MO HealthNet Program for the service provided by the employee or the personal care attendant to eligible individuals?**

(2) The trial court did not err in certifying the Fiscal Note Summary. The Auditor's reference to "universities and governmental entities" is not misleading as a collective term and was also supported by a reasonable inference that since the summarized response was submitted at the direction of the University of Missouri System Controller the response was made on behalf of the university system as a whole. In addition, the inclusion in the Fiscal Note Summary of "one-time costs exceeding \$100,000 with the total costs being unknown" was supported by the response received by the Auditor. Finally, the Auditor was not required to include in the summary any impact on state finances as the Auditor received no submission that provided a projection of an increase or decrease of tax revenue to the State for the Fiscal Note.

(3) The trial court did not err in certifying the Fiscal Note because the Auditor is only required by statute to include in fiscal notes the estimated cost or savings to state and local governmental entities. Regardless, the Auditor, pursuant to its standard practices, did include statements it received regarding the fiscal impact to small businesses in the Fiscal Note and is under no obligation to go further and conduct an independent investigation or analysis.

Opinion by Gary D. Witt, Judge

November 17, 2015

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